

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:) Chapter 11
)
MERCY HOSPITAL, IOWA CITY, IOWA,) Case No. 23-00623 (TJC)
)
et al.,) (Jointly Administered)
)
Debtors.)

**OBJECTION OF CASSLING DIAGNOSTIC IMAGING, INC. TO DEBTORS' NOTICE
OF ASSUMPTION AND ASSIGNMENT OF ADDITIONAL EXECUTORY
CONTRACTS OR UNEXPIRED LEASES AND CURE COSTS**

Cassling Diagnostic Imaging, Inc. ("Cassling"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Notice of Assumption and Assignment of Additional Executory Contracts or Unexpired Leases and Cure Costs* dated December 29, 2023 (Docket No. 610) (the "Additional Notice to Assume") filed by the above-captioned Debtors. In support of this Objection, Cassling states:

BACKGROUND

1. On August 7, 2023, Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the "Petition Date").
2. In the Additional Notice to Assume, Debtors identify the following two agreements that Cassling is a counterparty to, seeking to potentially assume and assign the following:

Counterparty	Contract Classification	Contract Title	Cure
Cassling	Third Party Service Agreement	Invoice No. 087731	\$0
Cassling Diagnostic Imaging, Inc. dba Cassling	Third Party Service Agreement	Proposal No. QUO-2254-X0D4W0	\$0

(Doc. 610, p. 6)

3. Pursuant to the Additional Notice to Assume, Cassling objects to the \$0 cure

amount identified for these two agreements.

OBJECTION TO CURE AMOUNTS

4. Section 365(b)(1)(A) requires that “[i]f there has been a default in an executory contract of the debtor, the trustee may not assume such contract unless, at the time of assumption, the trustee cures or provides adequate assurance that the trustee will promptly cure, such default.” 11 U.S.C. 365(b)(1)(A).

5. Debtors’ proposed zero dollar cure amount for both of the Cassling contracts identified in the Additional Notice to Assume fails to satisfy 11 U.S.C. § 365(b)(1)(A).

6. First, Invoice No. 087731 relates to a Cassling Service Agreement for certain medical equipment that is used by OB/GYN Associates of Iowa City & Coralville (the “Service Agreement”), which is part of Mercy Hospital. Debtors are obligated to pay \$263.92 per month under that Service Agreement, as set forth in the following invoices that have been sent to Debtors: Invoice No. 087082, dated 6/1/2023; Invoice No. 087401, dated July 1, 2023; Invoice No. 088065, dated September 1, 2023; Invoice No. 089067, dated 12/1/2023; and Invoice No. 089366, dated 1/1/2024.

- a) As of January 9, 2024, at least \$1,398.80 is due and owing to Cassling under that Service Agreement, as Debtors have failed to pay at least five monthly payments to Cassling, both pre- and post-Petition.
- b) While Debtors have made one post-Petition payment, that is less than the total amount due to Cassling under this agreement.

7. Second, Proposal No. QUO-2254-X0D4W0 relates to an Agreement dated on or about July 19, 2023, for maintenance services related to three pieces of medical equipment that are used by Debtors (the “Equipment Agreement”). The Equipment Agreement covers services for

the equipment between June 1, 2023 and May 31, 2027.

- a) As of December 31, 2023, the amount due and owing to Cassling under this Equipment Agreement is no less than \$58,376.03.
- b) In addition, the monthly charges under this Equipment Agreement are \$13,986.32 and nothing has been paid for January 2024 yet.
- c) While Debtors have made approximately two post-Petition payments under this Equipment Agreement, the amount paid is less than the total amount due to Cassling under this agreement. The amounts due and owing under this Equipment Agreement are included in unpaid invoice nos. 087533, 088686, 089039, and 089353 that have been sent to Debtors.

8. If the Debtors intend to assume the Service Agreement and Equipment Agreement, Debtors must pay Cassling an amount due, as of January 9, 2024, of not less than \$59,774.83, which will increase to \$73,761.15 as of February 1, 2024.

9. Cassling objects to the assumption of either the Service Agreement or Equipment Agreement unless and until the amounts due and owing under those agreements are paid in full to Cassling.

WHEREFORE, Cassling respectfully requests that its Objection be sustained, that any assumption and assignment of Cassling's Service Agreement and Equipment Agreement (as defined herein) be conditioned upon payment in full of the cure amounts identified in this Objection, that the Court order the Debtors to pay the correct cure amounts, and grant Cassling such other and further relief as the Court may deem just and proper.

DATED this 12th day of January, 2024.

Cassling Diagnostic Imaging, Inc.,

By: /s/ Brian J. Koenig

Brian J. Koenig, # AT0009367

Kristin Krueger (*pro hac vice admission pending*)

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CERTIFICATE OF SERVICE

On this 12th day of January, 2024, I served notice of the above and foregoing as follows:

- electronically filing the foregoing Objection with the Clerk of the Bankruptcy Court using the CM/ECF system which sent notification of such filing to all CM/ECF participants; and
- via email to the following Notice Parties pursuant to the requirements of the Additional Notice of Assume:
 - Mercy Hospital, Iowa City, Iowa
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/s/ Brian J. Koenig

Brian J. Koenig